IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 14401 of 2001

Between:

M/s. Virat Crade Industries Ltd.,

Rep.by M.D., G.V.S.L.Kantha Rao,
25-2-1, Opp: Mastan Darga,
Guntur.

..... PETITIONER

AND

1 State of A.P., Rep. Principal Secretary,
Revenue Dept., Secretariat,
Hyderabad.
2 The Commissioner of Commercial Taxes, Govt. of A.P.,
Nampally, Hyderabad.
3 The Commercial Tax Officer, Patnam Bazar,
Guntur.
4 Union of India, Rep. Secretary.
Finance Dept., Govt. of India,
New Delhi.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction declaring the insertion of gutka in Item 1(one) of the Schedule to A.P.Taxes on Luxuries Act

1987 by ordinance 2/2001 as illegal, arbitrary and violative of Articles 14 and 19 of the Constitution of India and accordingly strike down the same to the extent of creation of impost on Gutka and accordingly interdict the respondents herein from levying or collecting Luxury tax on gutka in the hands of the petitioner, or in alternative direct the Union of India not to release the share of ADE to the State of A.P. with regard to Tobacco, cotton Fabrics and sugar and also recover the amount already released and pass such other orders as may deem fit.

Counsel for the Petitioner: MR.A.ANANDA RAO

Counsel for Respondent Nos 1 to 3: G.P for Commercial Tax

Counsel for the Respondent No.4: MR.A.RAJASHEKAR REDDY (ASST.SOLICITOR GEN.)

The Court made the following :

ORAL ORDER:(Per Sri BRSR.J)

It is stated by the learned counsel for the petitioner as well as by the learned special Government Pleader appearing for the department that the subject matter that arises for consideration in these writ petitions is squarely covered by an authoritative pronouncement of the Supreme Court in GODFREY PHILLIPS INDIA LIMITED Vs.

STATE OF U.P.. Following the said decision, this writ petition is allowed in the same terms.

The learned Special Government Pleader appearing for the department has however drawn our attention to paras 97 and 98 of the judgment, which are to the following effect.

"It was stated on behalf of the State Government that after obtaining interim orders from this Court against recovery of luxury tax, the appellants continued to charge such tax from consumers/customers. It is alleged that they did not pay such tax to respective State Governments. It was, therefore, submitted that if the appellants are allowed to retain the amounts collected by them towards luxury tax from consumers, it would amount to "unjust enrichment" by them.

In our opinion, the submission is well-founded and deserves to be upheld. If the appellants have collected any amount towards luxury tax from consumers/customers after obtaining interim orders from this Court, they will pay the said amounts to the respective State Governments."

It is needless to observe that the above said observations made by the Supreme Court will equally be applicable to the case on hand.

(B.SUDERSHAN REDDY,J)

dated 13..04..2005

(C.V.RAMULU,J)

That Rule nisi has been made absolute as above. Witness the Hon'ble Sri BILAL NAZKI, the Acting Chief Justice on this Wednesday, the twenty seventh day of April, Two Thousand and Five.

To

1 The Principal Secretary,
Revenue Dept., Secretariat,
State of A.P., Hyderabad.
2 The Commissioner of Commercial Taxes, Govt. of A.P.,
Nampally, Hyderabad.
3 The Commercial Tax Officer, Patnam Bazar,
Guntur.
4 The Secretary.
Finance Dept., Govt. of India,
New Delhi.

5 2 CCs to GP for Commercial Tax, High Court of A.P.

Hyderabad (OUT)

6 2 CD copies.